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C O N F I D E N T I A L SECTION 01 OF 02 TIRANA 000559

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DEPT FOR EUR/SCE (MBENEDICT)
NSC FOR BRAUN

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TAGS: [PREL](#) [PGOV](#) [KJUS](#) [AL](#)

SUBJECT: CONSTITUTIONAL COURT AFFIRMS JUDICIAL Q@%Q@AQON(U) Under the Albanian Constitution, the High Council of Justice (HCJ) is the governing body of the judiciary, with responsibility for its organization and functioning. The primary purpose of the HCJ is to propose judges for

appointment, discipline judges, and transfer judges from one court to another. The HCJ also has the authority to appoint one of the seven members of the Central Election Commission (CEC). The HCJ consists of fifteen members, including nine proposed by the National Judiciary Conference (NJC) and three by the Parliament. The final three members are the President of the Republic, who serves as the Chairman of the HCJ, the President of the Constitutional Court, and the Minister of Justice.

MOST AMENDMENTS REJECTED...

13. (SBU) In a 5-4 decision the Constitutional Court overturned key provisions of a controversial set of amendments aimed at reforming the HCJ. Referred to as the "Law Regarding Conflict of Interest in the HCJ", the amendments were approved by Parliament late last year and came into force in January. The amendments automatically took effect without the signature of President Moisiu, since he declined to take action within 20 days (thereby signaling disapproval without exercise of a veto), as specified by the Constitution. The legislation ostensibly sought to reduce possible conflicts of interest by forcing HCJ members to either resign from the HCJ or to retire active judgeships and cease all outside activities (except teaching) in order to serve full time on the High Council.

14. (SBU) As originally written, the 2001 HCJ law declared membership on the High Council as incompatible with employment as a prosecutor, an executive in a political party, or a lawyer accredited to trial courts or courts of appeal. As amended, teaching would have been the only permitted outside activity for members of the HCJ and all other positions, including that of judge, would have to be relinquished.

15. (SBU) The Constitutional Court wrote that forcing HCJ members to choose between continued membership or an active

judgeship is unconstitutional. The term of office for membership in the HCJ is 5 years and that of a judge is life. Forcing HCJ members to choose between these offices infringes on the independence of the judicial branch by the legislative branch. It was argued that the terms of these offices are set in the Constitution, and the legislature cannot change that by act of law.

¶6. (U) In further explanation, the Court noted that membership on the HCJ is not only inherently part-time, but must allow for members of that body to have other functions,

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including that of an active judge. Why? Because the head of the Supreme Court, as a constitutionally-mandated member of the HCJ, must necessarily remain an active judge, something the new law would have disallowed.

¶7. (SBU) The proposed law also granted members of the HCJ immunity from prosecution, under the reasoning that if they were no longer sitting judges they would no longer enjoy immunity derived from that office. But this measure would also have extended immunity even to the non-judicial members. Such immunity is not provided by the Constitution and, according to the decision of the Constitutional Court, cannot be granted by an act of law.

...EXCEPT ONE

Qe|Qu*embers elected by the National Judiciary Conference must be judges with a minimum of 10 years experience and that the three members chosen by the Parliament must be lawyers, not judges, with a minimum of 15 years experience. As originally written, all elected members of the HCJ could be judges.

¶9. (C) COMMENT: A common criticism of the Berisha government is that, though well intended, it has sometimes behaved heavy-handedly in its efforts to combat organized crime and corruption. By issuing this ruling the Court has fulfilled its "checks and balances" role. It also reaffirms that respect for the rule of law begins with respect for the Constitution. This law would have also infringed on the ability of the judiciary to control and regulate itself, an essential element of the division of power.

¶10. (C) COMMENT CONT: As is often the case there may be an underlying political motive. Some believe that these amendments were pushed through by the DP-led Parliament in part as a way to force out a number of the members of the HCJ before the expiration of their mandates. The underlying issue here is not merely control over the HCJ itself, but over the critically important role of the HCJ to select the supposed "impartial" deciding member of the Central Election Commission (CEC). By changing the make up of the HCJ, the governing party would have strengthened its ability to control the CEC. END COMMENT
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